DATO' JOSEPH CHONG CHEK AH

v.

TAN SRI DATO' CHAN CHOONG TAK

HIGH COURT MALAYA, KUALA LUMPUR
ABDUL KADIR SULAIMAN J
[CIVIL SUIT NO: R1-22-7-96]
14 OCTOBER 1996

UNINCORPORATED ASSOCIATIONS: *Societies - Judicial review - Decisions of political party or its organs - Whether can be challenged in court - Whether issue of mala fides relevant - Societies Act 1966, s. 18C*

The plaintiff was a member of the Central Committee ('CC') of the Parti Gerakan Rakyat Malaysia ('the party'), having been appointed to the post by the party's president. Rule 2.5 of the party's Election Procedure Rules 1996 ('the Rules') provided that existing members of the CC were qualified to be nominated for election to certain posts at the National Delegates' Conference ('the NDC'). On 26 September 1996, the plaintiff filed his nomination with the party's National Election Supervisory Committee ('the NESC') as a candidate for the party's presidency in his capacity as a member of the CC. The election was scheduled for 5 October 1996. However, by 7pm on 26 September 1996, the CC had decided to terminate the plaintiff's appointment as a member of the CC and the president revoked his appointment with immediate effect. On 28 September 1996, the NESC disqualified him from contesting in 5 October election on the ground that he was not a delegate duly elected pursuant to Art 35.1 of the party's constitution.

The plaintiff filed a writ against the defendant as chairman of the NESC on 20 October 1996, seeking certain declarations. Pending disposal of the writ action, the plaintiff filed the present summons in chambers on the same day, for a mandatory injunction to compel the defendant to receive and accept his nomination as a candidate for the post of party President. The plaintiff contended that the power to terminate his application was exercised unlawfully and in bad faith having regard to the backdrop of events leading to the termination. The issue for decision was the effect of s. 18C of the Societies Act 1966 ('the Act') which provides, *inter alia,* that the decision of a political party or any person authorised by it shall not be challenged in any court of law and no court shall have jurisdiction to entertain any suit or application regarding the validity of such decision.

Held:

[1] Section 18C of the Act had a direct bearing on the matter at hand as it related to the affairs of a registered political society which was a private association. Thus the cases concerning public decision-makers such as *Anisminic Ltd v. Foreign Compensation Commission* [1969] 2 AC 147 had no relevance.

[2] The effect of s. 18C is to immunise all decisions of political societies or their organs from judicial scrutiny and thereby render obsolete the previous judgments of the court regarding ouster clauses contained in the constitution of registered political societies, such as *Datuk Pasamanikam & Anor v. Agnes Joseph* [1980] 2 MLJ 92.

[3] Whether a decision of a political party or one or more of its officers or organs is made in alleged breach of natural justice or in contravention of its constitution or is *mala fide* is wholly irrelevant because Parliament has placed all such decisions beyond the jurisdiction of the courts. The court is prohibited from looking behind the impugned decision.

[4] If there is any dispute within the party, that dispute is to be resolved by the party itself using the machinery provided by its constitution, rules or regulations.

[Application dismissed.]

Cases referred to:
Anisminic Ltd v. Foreign Compensation Commission [1969] 2 AC 147 ***(dist)***
Burn v. National Amalgamate Labourers' Union of Great Britain and Ireland [1920] 2 Ch 364 ***(cit)***
Chong Kok Lim & Ors v. Yong Su Hian [1979] 2 MLJ 11 ***(cit)***
Datuk Pasamanikam & Anor v. Agnes Joseph [1980] 2 MLJ 92 ***(refd)***
DP Vijandran v. Majlis Peguam [1996] 1 CLJ 023 ***(cit)***
Mahan Singh v. Government of Malaysia [1978] 2 MLJ 133 ***(cit)***

Legislation referred to:
Societies Act 1966, s. 18C

For the plaintiff - CV Das (Mohamad Yusof, Bhartidevi Seth, Steven Thiru & Robert Low with him)
For the defendant - Cecil Abraham (Thangaraj Balasundram, Azalina Othman Said, Philip Chan & Gurmit Kaur Sidhu with him)

Reported by Anne Khoo

JUDGMENT

Abdul Kadir Sulaiman J:

The plaintiff on 2 October 1966 filed a writ against the defendant for various declarations concerning the decision made by the National Election Supervisory Committee (the NESC) of Parti Gerakan Rakyat Malaysia (the Party) disqualifying him as a candidate for the post of President of the Party in the party election scheduled to be held on 5 October 1996. Pending the disposal of the action in the writ, on the same day, the plaintiff filed this summons in chambers to be heard *inter partes*. At the request of both parties this summons was adjourned to open court for disposal commencing on 3 October 1996. This summons prays for an order of mandatory injunction to compel the defendant to receive and accept and emplace his nomination as a candidate for the post of party president on the ballot paper for the purpose of election during the National Delegates' Conference (the NDC) scheduled to be held on 5 October 1996. The hearing before me was completed on 4 October 1996 and at the end of it I delivered an oral decision dismissing the application by the plaintiff with costs to the defendant for lack of jurisdiction. I now proceed to give my reasons for the dismissal.

The application of the plaintiff is supported by his affidavit affirmed on 2 October 1996. The respondent in his affidavit in reply, among other things, questioned the jurisdiction of this court to hear this said application of the plaintiff, drawing the attention of the court to s. 18C of the Societies Act 1966 (the Act) which came into force on 12 January 1990 *vide* Act A 743/1990. Section 18C which was inserted under Part IA of the Act applicable only to political parties states as follows:

> 18C. **Decision of political party to be final and conclusive.**
>
> The decision of a political party or any person authorised by it or by its constitution or rules or regulations made thereunder on the interpretation of its constitution, rules or regulations or on any matter relating to the affairs of the party shall be final and conclusive and such decision shall not be challenged, appealed against, reviewed, quashed or called in question in any court on any ground, and **no court shall have jurisdiction to entertain or determine any suit, application, question or proceeding on any ground regarding the validity of such decision**. (Emphasis added.)

Of immediate concern to the court are the words emphasised above which the legislature chooses to incorporate in s. 18C of the Act ousting the jurisdiction of the court in entertaining and determining any suit, application, question or proceeding on any ground regarding the validity of any decision of a political party or any person authorised by it or by its constitution or rules or

regulations made thereunder on the interpretation of its constitution, rules or regulations or on any matter relating to the affairs of the party which the law regards that as final and conclusive.

It must be borne in mind, and this I do, that the matters under challenge in this suit relates to the affairs of a registered political society which is a private association and therefore, s. 18C is in point. The impugned decision is not that of a public decision-maker. This distinction is vital and has, with respect, been overlooked by counsel. The decisions of our courts that have applied *Anisminic Ltd. v. Foreign Compensation Commission* [1969] 2 AC 147 have no application to the instant case as these concern ouster clauses purporting to immunize the decisions of public decision-makers. At the risk of repetition, I emphasise that the decision which the plaintiff has challenged in the present case is **not** one made by a public decision-maker but by a private association.

The policy of the courts towards an ouster clause contained in the constitution of a registered political society was stated by Raja Azlan Shah CJ (Malaya) (as he then was) in *Datuk Pasamanikam & Anor. v. Agnes Joseph* [1980] 2 MLJ 92, 96 as follows:

> We would be slow to interfere with the decision of the members of the Malaysian Indian Congress professing to act under their rules, *unless it could be shown either that the rules were contrary to natural justice, or that what had been done was contrary to natural justice, or that what had been done was contrary to the rules of the association, or that there had been mala fides or malice in coming to a decision*. (Emphasis added.)

Thus, the decisions of a political society or of one or more of its organs was capable of being placed beyond challenge in the courts by an ouster clause in the constitution of the society save on the grounds specified by his Lordship in the foregoing passage, namely, *mala fides*, etc. However, the effect of the provisions of s. 18C, in my judgment, is to immunize all decisions of political societies or their organs from judicial scrutiny and to thereby wipe clean the exceptions enumerated by the learned Chief Justice in *Agnes Joseph* (*supra*). Whether a decision of a political party or of one or more of its officers or organs is made in alleged breach of the rules of natural justice or in alleged contravention of the provisions of its constitution or is allegedly *mala fide* is wholly irrelevant because Parliament has placed all such decisions beyond the jurisdiction of the courts. The ouster contained in s. 18C is absolute and effective. It is the dear intention of the legislature to recognise the decision so made by such body to be final and conclusive. The court is prohibited from looking behind the impugned decision to see whether it is indeed a real decision. If any suit, application, question or proceeding is brought before the court challenging the validity of such a decision made by the political party

or its organs, the only duty of the court is to be satisfied whether the impugned decision is made by those authorised by the section or otherwise. If it is so made, that is the end of the matter for the court. Its jurisdiction is ousted. The rationale is clear. In any political party, its constitution, rules or regulations would normally provide machinery within the party itself to help resolve the internal dispute between members and members and between members and the party. Therefore, it follows that if there exist any dispute from within the party, it is appropriate for that dispute to be resolved by the particular political party using the machinery so provided and not by any other party outside it including the courts.

In this matter before me now, it is not in dispute that Party Gerakan Rakyat is a political party. The impugned decision disqualifying the plaintiff from contesting the post of president of the Party in the coming election scheduled to be held on 5 October 1996 is that of the NESC based upon their interpretation of the party constitution and the rules made thereunder. The rules called the Election Procedures 1996 (the rules) were made by the NDC of the Party pursuant to the powers given to it by the constitution which by Art. 90.1 of the constitution have the same force and effect as the constitution itself. The NESC was appointed by the Central Committee (the CC) pursuant to r. 4.6(c) of the rules giving it the power to oversee this 1996 party election. Therefore, for the purpose of s. 18C of the Act, the NESC is a person authorised. Rule 2.5 provides that existing members of the CC is qualified to be nominated as a candidate for election to the post to be filled through the election in the NDC which in the case of the plaintiff is the post of a president in the Party. Prior to 26 September 1996 the plaintiff was a member of the CC being appointed by the President pursuant to Art. 36(j)(iii) of the constitution. On the morning of 26 September 1996 the plaintiff filed his nomination paper with the NESC as a candidate for the election of the office of the president of the Party in his capacity as the existing member of the CC being a delegate to the NDC pursuant to Art. 35.1(a) of the constitution. However, by 7 pm the same day the CC made a decision to terminate his appointment as a member of the CC and the President invoking his power under Art. 94 of the constitution revoked his appointment as such a member with immediate effect. The plaintiff was accordingly informed of the revocation of his appointment by a letter dated 27 September 1996. He, therefore, ceased to be a member of the CC. Up to this time the NESC had not made up the decision as to the position of the plaintiff as a candidate in the coming election. It was only on 28 September 1996 that the NESC made the impugned decision disqualifying the plaintiff from contesting in the election on the ground that he was not a delegate duly elected pursuant to Art. 35.1 of the constitution. The plaintiff could not any longer avail himself the benefit accorded to an existing member of the CC by Art. 35.1 of the constitution as

at the time of the making of the decision by the NESC he was no longer an existing member of the CC. That being the decision of an authorised person of a political party that decision is within the contemplation of Parliament by s. 18C of the Act to forbid the court from having jurisdiction to scrutinise, I therefore, have no jurisdiction to entertain this application by the plaintiff.

The learned counsel for the plaintiff traced the backdrop of events leading to the termination of the plaintiff's membership as a member of the CC by the President. It is contended that the power to terminate him was being exercised unlawfully and in bad faith. It was done in breach of natural justice and also was carried out *mala fide*. The cases of *Chong Kok Lim & Ors. v. Yong Su Hian* [1979] 2 MLJ 11; *Mahan Singh v. Government of Malaysia* [1978] 2 MLJ 133; *Burn v. National Amalgamate Labourers' Union of Great Britain and Ireland* [1920] 2 Ch. 364; *DP Vijandran v. Majlis Peguam* [1995] 3 MLJ 576 were cited as authorities in support of the contention that the termination of the plaintiff was unlawful. I do not consider the authorities cited be of any relevance to the plaintiff's case in the light of what was said earlier when dealing with *Agnes Joseph's* case in interpreting s. 18C of the Act. Also, as I have said, I am not here dealing with an ouster clause in a statute concerning the decisions of a public decision-maker, but rather of a private body. The cases that discuss the effect of an ouster clause in the context of public law are therefore, irrelevant and have no application to the case before me. In any event, the persons involved in the termination of the plaintiff as a member of the CC are not before the court in this application for, the action of the plaintiff is only against the NESC, through its Chairman, the defendant. Once recognised that the NESC is a "person authorised" by the constitution or the rules made thereunder, it is not the concern of the NESC to investigate into the validity or otherwise of the termination of the plaintiff by another organ of the Party. Being a body in charge of directing and supervising the election their duty is to ascertain that the plaintiff is a qualified person to contest the party election for the post of president on 5 October 1996. At the time they were to make the impugned decision they discovered that the plaintiff was no longer an eidsting member of the CC to take advantage of r. 2.5 of the rules.

For these reasons, I am constrained to dismiss the plaintiff's summons with costs.